

United States District Court		District Eastern Massachusetts
Name William Santiago	Prisoner No. W55337	Case No.
Place of Confinement Souza Baranowski Correctional Center (SBCC) P.O. BOX 8000 / Harvard Rd. Shirlev. MA. 014646-8000		
Name of Petitioner (include name under which convicted) William Santiago Petitioner		Name of Respondent (authorized person having custody of petitioner) V. Commonwealth Respondents
The Attorney General of the State of: Massachusetts		

PETITION

- Name and location of court which entered the judgment of conviction under attack Chelsea District Court, 120 Broadway, Chelsea, MA, 02150
- Date of judgment of conviction December 16, 2002
- Length of sentence Not applicable (court fines)
- Nature of offense involved (all counts) 8714CR2106 Disorderly Person and Affray, 9114CR3699 Assault and Battery, 9114CR3700 Malicious Destruction of Property under \$250.00 and Threatening To Commit a Crime.
- What was your plea? (Check one)
 - (a) Not guilty ☒
 - (b) Guilty ☐
 - (c) Nolo contendere ☐

If you entered a guilty plea to one count or indictment, and not a guilty plea to another count or indictment, give details:

8714CR2106 NOT GUILTY (Admits Suff. facts) (paid court fines).

9114CR3699 and 3700 NOT GUILTY (Nolle Prosequi)-(Filed without a change of plea).
- If you pleaded not guilty, what kind of trial did you have? (Check one)
 - (a) Jury ☐
 - (b) Judge only ☒
- Did you testify at the trial?
Yes ☐ No ☒
- Did you appeal from the judgment of conviction?
Yes ☒ No ☐

For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed if you have exhausted your state court remedies with respect to them. However, *you should raise in this petition all available grounds* (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.
- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (h) Denial of right of appeal.

A. Ground one: See attached

Supporting FACTS (state *briefly* without citing cases or law) _____

B. Ground two: See attached

Supporting FACTS (state *briefly* without citing cases or law) _____

AO 241 (Rev. 5/85)

C. Ground three: See attachedSupporting FACTS (state *briefly* without citing cases or law)D. Ground four: See attachedSupporting FACTS (state *briefly* without citing cases or law)

13. If any of the grounds listed in 12A, B, C, and D were not previously presented in any other court, state or federal, state *briefly* what grounds were not so presented, and give your reasons for not presenting them:

N/A

14. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?

Yes ☐No ☒

15. Give the name and address, if known, of each attorney who represented you in the following stages of judgment attacked herein

(a) At preliminary hearing Pro se(b) At arraignment and plea Pro Se

AO 241 (Rev. 5/85)

(c) At trial Pro se(d) At sentencing Pro se(e) On appeal Pro se(f) In any post-conviction proceeding Attorney Ronald Stone on the second Motion for a New Trial, filed in the Chelsea District Court.

(g) On appeal from any adverse ruling in a post-conviction proceeding

N/A

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and the same time?

Yes ☒ No ☐

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐ No ☒

(a) If so, give name and location of court which imposed sentence to be served in the future:

N/A(b) Give date and length of the above sentence: N/A

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ☒ No ☐ (see No. 15 (f) above.)

Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.

N/A

Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

8/2/2004
(date)
Signature of Petitioner

Ground one: THERE WAS A BASIS TO OVERCOME THE PRESUMPTION OF REGULARITY IN THE CASES FROM THE CHELSEA DISTRICT COURT (LOWER COURT).

Facts (without caselaw):

Appellant filed his pro se Motion for New Trial on 12/11/02. (Ex. A). The appellant sent copies to the Suffolk District Attorney's Office and the Assistant District Attorney in the lower court.

The lower court denied the motion within five days of receiving it, without a hearing on 12/16/02. The lower court did not give opportunity for the opposing party to file an opposition. The lower courts reasons for the denial of the Motion for a New Trial was "because there was no basis to overcome the presumption of regularity" and the "motion was not timely filed." (Ex. A).

The judges of the original dockets are deceased or unavailable. The transcripts were destroyed pursuant to court rules. The record is constructed by the docket entry sheets and appellant's memory.

DOCKET NUMBER 8714CR2106

In docket No. 8714CR2106. Disorderly Person G.L. c. 272 s. 53 and Affray (No chapter or section given). (Ex. A). Appellant was without the assistance of counsel. There were no waivers or certificates found in the record stating that appellant elected to proceed without counsel. Appellant did did not waive any constitutional rights. There is no written

reference to a colloquy ever being done. 1/

Ground two: THE DOCKET NUMBERS 9114CR3699 AND 9114CR3700 WERE FILED WITHOUT APPELLANT'S CONSENT.

Docket number 9114CR3699. Assault and Battery. G.L. c. 265 s. 13A and docket number 9114CR3700. Malicious Destruction of Property, G.L. c. 266 s. 127 and Threat to Commit a Crime, G.L. c. 275 s. 2, were filed without a change of plea. 2/ This was done without appellant's consent.

Appellant did not give verbal or written permission to his then attorney on these two dockets to file the cases, "Filed without a change of plea."

In the record there can be found an affidavit filed by the alleged complainant and the appellant stating that all parties to the criminal matter agreed to dismiss the criminal cases. (Ex. A).

This strongly suggests that the two docket numbers were filed 3/ without the appellant's consent. He therefore is entitled to consideration of merits of his claims of error regarding the filed convictions.

1/ It was appellant's first dealings with the legal system and he was unaware he was entitled to an attorney.

2/ Both of these docket numbers have the capitol letters "N.P." in the disposition box. Which indicates Nolle Prosequi. Nolle Prosequi= Prosecution wishes not to prosecute. He/she abandoned the action. See Black's Law Dictionary.

3/ Filed cases remain subject to reactivation at anytime, including removal from the file for imposition of a sentence. They also can be and are used to enhance Federal sentences See Com. v. Pingaro. 44 Mass.App.Ct. 41 (1997).